

THE WHITE HOUSE
WASHINGTON

May 3, 1974

Presidential Determination
No. 74-18

MEMORANDUM FOR THE SECRETARY OF STATE

Subject: Determination Concerning Certain
Use of Assistance in Africa

Pursuant to the authority vested in me by Section 38 of the Foreign Assistance Act of 1973, I hereby determine with respect to each non-African country having territories in Africa, that no such countries have used:

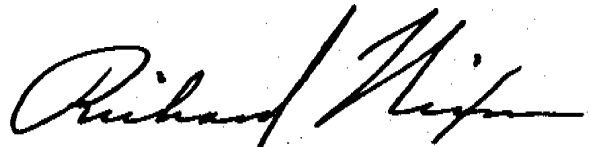
(1) assistance furnished under the Foreign Assistance Act of 1961 after December 17, 1973;

(2) defense articles or services furnished under the Foreign Military Sales Act after December 17, 1973; or

(3) agricultural commodities furnished under the Agricultural Trade Development and Assistance Act of 1954 after December 17, 1973, in support of their military activities in their African territories prior to the date of this determination.

You are requested on my behalf to report this determination to the Congress, as required by law.

This determination shall be published in the Federal Register.





DEPARTMENT OF STATE

Washington, D.C. 20520

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Justification for Presidential
Determination Regarding Certain
Use of Assistance in Africa

Problem:

Section 38 of the Foreign Assistance Act of 1973, approved December 17, 1973, provides that:

"The President of the United States shall, as soon as practicable following the date of the enactment of this Act, make a determination and report to Congress with respect to the use, if any, by any non-African country in support of its military activities in its African territories of (1) assistance furnished under the Foreign Assistance Act of 1961 after the date of the enactment of this Act; (2) defense articles or services furnished after such date under the Foreign Military Sales Act; or (3) agricultural commodities furnished after such date under the Agricultural Trade Development and Assistance Act of 1954."

Application of Section 38

By its terms, Section 38 applies to a non-African country receiving the specified forms of assistance, and using such assistance "in support of its military activities in its African territories". Four European states may be considered to have "African territories" for the purposes of this statute: Portugal, Spain, France, and possibly the United Kingdom.

The U.S. Embassies in Lisbon, Madrid and Paris have confirmed that no assistance of the forms specified received since December 17, 1973, has been used by the host country in support of its military operations in its African territories.

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Embassy London doubted that the United Kingdom continued to have territories for the purposes of this section. Regardless of the characterization given to the U.K.'s legal relationship to Rhodesia, the U.K. has undertaken no military operations in Rhodesia, and accordingly no assistance of the forms specified by Section 38 received since December 17, 1973, has been used in support of U.K. military operations in Rhodesia.

Conclusion

There is a reasonable basis upon which to determine that no non-African nation employs or has employed assistance of the forms specified received since December 17, 1973, in support of its military activities in its African territories.


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THE WHITE HOUSE
WASHINGTON

ACTION

April 27, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: HENRY A. KISSINGER 
SUBJECT: Determination Regarding Military Use in
African Territories of Assistance Provided
to Non-African Countries

Deputy Secretary of State Rush recommends that you determine and report to the Congress pursuant to Section 38 of the Foreign Assistance Act of 1973 that no non-African countries having territories in Africa have used any U. S. assistance provided since December 17, 1973, under (1) the Foreign Assistance Act, (2) the Foreign Military Sales Act and (3) the Agriculture Trade Development and Assistance Act in support of military activities in their African territories (Tab B).

As enacted, Section 38 is a diluted version of the Tunney Amendment, which would have enacted into law the embargo on military assistance for use by Portugal in Portugal's African territories. Section 38 does not make specific reference to Portugal, and applies instead to all non-African countries having territories in Africa. It establishes a reporting requirement only and does not specify any legal consequences if the report were to show that U. S. assistance had been used in African colonies. This language would certainly extend to Portugal, Spain and France and perhaps to the United Kingdom.

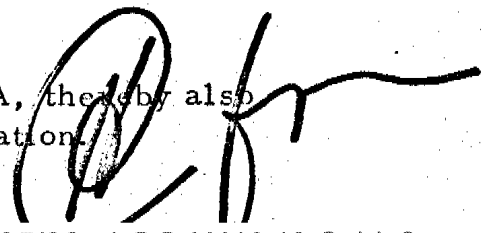
The U. S. Embassies in Portugal, Spain, France and the United Kingdom have confirmed that no assistance of the forms specified and received since December 17, 1973, has been used for the purposes described by Section 38.

No adverse Congressional reactions are anticipated. Although not required by law, the Determination would be published in the Federal Register.

Bill Timmons and Roy Ash (Tab C) concur.

RECOMMENDATION

That you sign the Presidential Determination at Tab A, thereby also indicating your approval of the accompanying justification.



MEMORANDUM

NATIONAL SECURITY COUNCIL

ACTION

April 23, 1974

MEMORANDUM FOR: SECRETARY KISSINGER
FROM: RICHARD T. KENNEDY *RTK*
SUBJECT: Determination Regarding Military Use in
African Territories of Assistance Provided
to Non-African Countries

Deputy Secretary Rush recommends that the President determine that non-African countries having territories in Africa have not used assistance provided since December 17, 1973, under the Foreign Assistance Act of 1961, the Foreign Military Sales Act, or the Agricultural Trade Development and Assistance Act in support of their military activities in their territories in Africa (Tab B).

A new provision of legislation, Section 38 of the Foreign Assistance Act of 1973, requires such determination and a report to Congress only with respect to assistance of the categories specified provided after the date of enactment, December 17, 1973.

The U.S. Embassies in Portugal, Spain, France and the United Kingdom have confirmed that no assistance of the forms specified received since December 17, 1973, has been used for the purposes described by Section 38.

The memo at Tab I would seek the required determination (at Tab A) by the President.

RECOMMENDATION

That you sign the memo to the President at Tab I.

Concurrences:

Hal Horan *HH*
Bud McFarlane
Denis Clift *DC*

DEPARTMENT OF STATE
WASHINGTON

April 8, 1974

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MEMORANDUM FOR THE PRESIDENT

Subject: Determination Regarding Military Use
in African Territories of Assistance
Provided to Non-African Countries

Summary

You are asked to determine that non-African countries having territories in Africa have not used assistance provided since December 17, 1973, under the Foreign Assistance Act of 1961, the Foreign Military Sales Act, or the Agricultural Trade Development and Assistance Act in support of their military activities in their territories in Africa.

Legal Considerations

A new provision of legislation, Section 38 of the Foreign Assistance Act of 1973 (hereinafter referred to as Section 38), states:

"The President of the United States shall, as soon as practicable following the date of the enactment of this Act, make a determination and report to Congress with respect to the use, if any, by any non-African country in support of its military activities in its African territories of (1) assistance furnished under the Foreign Assistance Act of 1961 after the date of the enactment of this Act; (2) Defense articles or services furnished after such date under the Foreign Military Sales Act, or (3) agricultural commodities furnished after such date under the Agricultural Trade Development and Assistance Act of 1954."

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Scope of Section 38

As enacted, Section 38 is a diluted version of the Tunney Amendment, which would have enacted into law the embargo on military assistance for use by Portugal in Portugal's African territories. Section 38 does not make specific reference to Portugal, and applies instead to all non-African countries having territories in Africa. It establishes a reporting requirement only and does not specify any legal consequences if the report were to show that U.S. assistance had been used in African colonies. This language would certainly extend to Portugal, Spain and France. It might arguably also cover the United Kingdom. By its express language, Section 38 requires a determination and report to Congress only with respect to assistance of the categories specified furnished after the date of enactment, that is, December 17, 1973.

The U.S. Embassies in Portugal, Spain, France and the United Kingdom have confirmed that no assistance of the forms specified received since December 17, 1973, has been used for the purposes described by Section 38. The attached Memorandum of Justification accompanying the proposed Determination is based upon these embassy reports.

If approved, the Determination and accompanying Justification would both be transmitted to the Congress to satisfy the requirements of Section 38. Although not required by law, the Determination would be published in the Federal Register.

Congressional Considerations

By narrowing the scope of Section 38 to cover only assistance furnished since December 17, 1973, the Congress clearly intended to impose only a limited requirement. No adverse action is anticipated.


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Recommendation:

I recommend that you sign the attached determination, thereby also indicating your approval of the accompanying justification.


Kenneth Rush
Acting Secretary

Attachments:

Proposed Determination and
accompanying Justification

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THE WHITE HOUSE
WASHINGTON

APR 17 1974

MEMORANDUM FOR THE PRESIDENT

FROM: ROY L. ASH

SUBJECT: Determination Regarding Military Use in
African Territories of Assistance Provided
to Non-African Countries

Deputy Secretary of State Rush recommends that you determine and report to the Congress pursuant to Section 38 of the Foreign Assistance Act of 1973 that no non-African countries having territories in Africa have used any U.S. assistance furnished under (1) the Foreign Assistance Act, (2) the Foreign Military Sales Act and (3) the Agriculture Trade Development and Assistance Act after December 17, 1973 in support of military activities in their African territories.

The relevant U.S. Embassies have confirmed that no assistance of the types specified received after December 17, 1973, has been used for the purposes described by Section 38. Based on these assurances, I concur in the recommendation that you sign the attached determination.

Attachments